

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

LUCIO ABEL, #R-15681,)	
)	
Plaintiff,)	
)	
-vs-)	No. 05-264-CJP
)	
MARK PIERSON, et al.,)	
)	
Defendants.)	

ORDER

A final pretrial conference was held May 20, 2008. Due to disputes regarding how the testimony of inmate witnesses Frank Smith and Orencio Serrano would be presented at trial, a final pretrial order was not completed.

Plaintiff's counsel wants to present the transcribed deposition testimony of Smith and Serrano, rather than having the witnesses testify live at trial (either in person or via video). Defendant Johnson wants Smith and Serrano to testify live, via video connection. Defendant did not articulate a clear rational for not utilizing the deposition testimony, except to note that it was the decision of Attorney General's Office. Defendant Johnson did not object to presenting the deposition testimony of other witnesses. Serrano speaks Spanish and his deposition testimony has already been translated. In the event Serrano were to testify live, the parties agreed the Court's interpreter could be utilized.

Federal Rule of Civil Procedure 32(a)(3) provides in pertinent part that deposition testimony may be used at trial if the witness is farther than 100 miles from Court, or is unable to attend because of imprisonment, or under other exceptional circumstances.

Smith and Serrano are both imprisoned at Logan Correctional Center, which is, according to MapQuest, approximately 125 miles from Court. Therefore, plaintiff is within his right to use their deposition testimony.

Defendant Johnson did not include Smith and Serrano on their witness list, but during the final pretrial conference, defense counsel indicated a desire to add them to the list. The Court will not permit the defendant's belated addition of Smith and Serrano as live witnesses to trump plaintiff's plan to present Smith and Serrano's testimony via deposition. However, defendant Johnson may present additional testimony from Smith and Serrano live via video connection during their case in chief, if additional matters are raised that were not part of Smith and Serrano's deposition testimony.

IT IS THEREFORE ORDERED that, on or before **June 17, 2008**, the parties shall adjust the final pretrial order in accordance with the aforementioned ruling and submit a final version signed by counsel for all parties to cjppd@ilsd.uscourts.gov. Upon receipt, the Court will sign the final pretrial order and have it filed with the Clerk of Court.

IT IS SO ORDERED.

DATED: June 2, 2008

s/ Clifford J. Proud

CLIFFORD J. PROUD
U. S. MAGISTRATE JUDGE